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82-675

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1982

No. 82-____

STATE OF ARIZONA, et al.,

Petitioners,

vs.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Respondent,

KAISER CEMENT CORPORATION, et al.,
Real Parties in Interest.

MOTION FOR RELIEF FROM COMPLIANCE WITH CERTAIN PROVISIONS OF SUPREME COURT RULES 19.3, 21.1(b), 28.1 and 28.3

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MOTION FOR RELIEF FROM COMPLIANCE WITH CERTAIN PROVISIONS OF SUPREME COURT RULES 19.3, 21.1(b), 28.1 and 28.3

Petitioners respectfully move this Court for relief from certain provisions of Supreme Court Rules 19.3, 21.1(b), 28.1, and 28.3, or if the motion is to be denied, that it be on the basis that absent class members are not "parties" for purposes of 28 U.S.C. § 455 and Supreme Court Rule 21.1(b). In support of this motion, Petitioners incorporate by reference those arguments made in (1) the "Motion For Relief From Compliance With Certain Provisions of Supreme Court Rules 19.3, 21.1(b), 28.1 and 28.3," filed in this Court on August 16, 1982 in conjunction with a petition for a writ of certiorari, in No. 28-287, and (2) "Petitioner's Reply Memorandum in Support of 'Motion For Relief From Compliance With Certain Provisions of Supreme Court Rules 19.3, 21.1(b), 28.1 and 28.3'" in No. 82-287.

CONCLUSION

WHEREFORE, Petitioners pray this Court for an order:

(1) That Petitioners have fully satisfied Supreme Court Rules 21.1(b) and 28.1 by filing with the Clerk of this Court on August 16, 1982, as Exhibit A to the "Motion For Relief From Compliance With Certain Provisions of Supreme Court Rules 19.3, 21.1(b), 28.1 and 28.3" in No. 82-287, one copy of the Master Class List of absent class members;

(2) That Petitioners have satisfied the filing requirement of Supreme Court Rule 19.3 by filing forty (40) copies of the "Petition For a Writ of Certiorari to the United States Court of Appeals For the Ninth Circuit" and by previously filing in No. 82-287 one copy of the Master Class List of absent class members with the Clerk of the Court; and

(3) That Petitioners have satisfied the service requirement of Supreme Court Rule 28.3 by serving copies of only their petition for a writ of certiorari on respondents, the other named parties, and class members who have entered an appearance in the proceedings in the district court, and by the service of one (1) copy of Exhibit A to the August 16, 1982 "Motion for Relief from Compliance with Certain Provisions of Supreme Court Rules 19.3, 21.1(b), 28.1 and 28.3" on respondents' counsel of record in No. 82-287, who is counsel for the real parties in interest here; and that Petitioners are relieved of any obligation which might otherwise exist to serve the petition for a writ of certiorari and/or the Master Class List on all absent members of the classes, or to serve the Master Class List on any other of counsel for the real parties in interest.

Alternatively, Petitioners pray that this Court order that absent class members are not "parties" for purposes of 28 U.S.C. § 455, or the Supreme Court Rules, and that the petition as filed is in full compliance with these rules.

DATED: October 15, 1982

Respectfully submitted,

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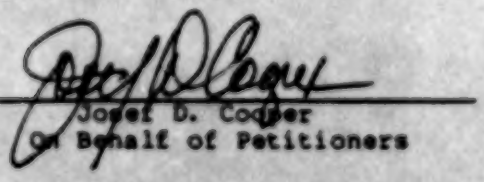
By 
Josef D. Cooper
On Behalf of Petitioners

PROOF OF MAILING - AFFIDAVIT

I, Josef D. Cooper, one of the attorneys for Petitioners herein, and a member of the Bar of the Supreme Court of the United States, hereby certify that on the 15th of October, 1982, I deposited in a United States Postal Service mailbox, located at the Rincon Annex Post Office, Spear and Mission Streets, San Francisco, California, with first-class postage prepaid, and properly addressed to the Clerk of the Supreme Court of the United States, within the time allowed for filing, the foregoing "Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit" and "Motion for Relief From Compliance with Certain Provisions of Supreme Court Rules 19.3, 21.1(b), 28.1 and 28.3."

Josef D. Cooper

Subscribed and sworn to before me, at San Francisco, California this 15th day of October, 1982.

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NOTARY PUBLIC-CALIFORNIA
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SAN FRANCISCO
My Commission Expires Oct. 9, 1984

Notary Public

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STATE OF ARIZONA, et al.,

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

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Proof of Service - Certificate by Bar Member

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I, Josef D. Cooper, one of the attorneys for Petitioners herein, and a member of the Bar of the Supreme Court of the United States, hereby certify that on the 15th day of October, 1982, three copies of the enclosed "Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit" and "Motion for Relief From Compliance with Certain Provisions of Supreme Court Rules 19.3, 21.1(b), 28.1 and 28.3" was served on the defendants' counsel, one copy on the plaintiffs' counsel, one copy on appearing counsel, three copies on Respondent, and three copies on the Solicitor General of the United States as identified on the attached list, by First Class United States Mail.

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